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October 19, 2020

National FOIA Office  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2310A)  
Washington, DC 20460

Re: Freedom of Information Act Request

Dear Freedom of Information Officer,

This law firm, Paul, Weiss, Rifkind, Wharton & Garrison, LLP, hereby makes this request pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, *et seq.* ("FOIA"), for copies of the records held by the United States Environmental Protection Agency ("EPA") that are described below.

Specifically, we are requesting the following documents and information:

**Records Requests**

1. All reports pursuant to 40 C.F.R. §§ 110 and 112 submitted to the EPA by Consolidated Edison Company of New York, Inc. ("Con Edison") or Public Service Electric & Gas Company ("PSE&G") from 1990 to the present that concern or involve dielectric fluid.

2. All emails sent to, from, or copying Shawna Hoppe, Christopher Jimenez, Doug Kodama, Christopher Lyon, Mary Mears, Mark Pane, Elias Rodriguez, or Steve Tuow of the EPA, on the one hand, and any personnel of Con Edison (email domain @coned.com), PSE&G (email domain @pseg.com), Arnold & Porter Kaye Scholer LLP (email domain @arnoldporter.com or @apks.com), Gibbons P.C. (email domain @gibbonslaw.com), or Covington & Burling LLP (email domain @cov.com), on the other hand, for the period May 1, 2018 to the present that contain any of the following search terms: “dielectric fluid”, “dielectric oil”, “oil”, “oil leak”, “fluid leak”, “fluid discharge”, “discharge”, “oil discharge”, “leak”, “Leak response”, “corrosion”, “disbonded coating”, “disbanded coating”, “spill”, “spill response”, “Newport”, “Newport Marina”, “Marina”, “Marina Pier”, “Marina bed”, “Marina spill”, “remediation”, “easement”, “B3402”, “B-3402”, “C3403”, “C-3403”, “B&C line”, “B and C line”, “transmission cable”, “cable”, “line”, “feeder”, “Elk Trucking”, “King Pile”, “Sheet Pile”, “permit”, “diver”, “repair”, “sediment”, “Hudson River”, “river”, “Emergency Phase Transition to Long Term Operations Plan”, “Responsible Party”, “PFT”, “Perfluorocarbon tracer”, “tracer fluid”, “tracer”, “Pollution Report”, “Closeout Letter”, “lancing”, “lancing plan”, “lance”, “sheen”, “pressure drop test”, “drop test”, and “pressurization test”.
3. All letters, reports, correspondence or other documents sent to, from, or copying Shawna Hoppe, Christopher Jimenez, Doug Kodama, Christopher Lyon, Mary Mears, Mark Pane, Elias Rodriguez, or Steve Tuow of the EPA, on the one hand, and any personnel of Con Edison, PSE&G, Arnold & Porter Kaye Scholer LLP, Gibbons P.C., or Covington & Burling LLP on the other hand, for the period May 1, 2018 to the present.
4. All documents and other records associated with the New York State Department of Environmental Conservation (“NYSDEC”) and/or United States Coast Guard (“Coast Guard”) spill numbers contained in Appendix A, including, but not limited to:
  - a. All spill reports relating to the spills associated with such spill numbers;
  - b. All emails between EPA personnel from EPA Region 2, on the one hand, and Coast Guard personnel from Sector New York or NYSDEC personnel from NYSDEC Regions 1, 2, and 3, on the other hand, from January 1, 1996 to January 1, 2016 relating to the spills associated with such spill numbers and that contain any of the following search terms: “dielectric fluid”, “dielectric oil”, “oil”, “oil leak”, “fluid leak”, “fluid discharge”, “discharge”, “oil discharge”, “leak”, “leak response”, “corrosion”, “disbonded

coating”, “disbanded coating”, “spill”, “spill response”, “transmission cable”, “lines”, “cables”, and “feeders.”

- (i) Coast Guard personnel should include, but not be limited to, individuals with the following titles or positions at the Coast Guard: “Commander, Coast Guard Sector New York”, “Incident Commander”, “FOSC”, “Federal On-Scene Coordinator”, “FOSC Representative”, “Chief, Incident Management Division”, “Chief, Response Department”, “Section Chief”, and “Liaison Officer.”
    - (ii) NYSDEC personnel should include, but not be limited to, individuals with the following titles or positions at NYSDEC: “Director of Division of Emergency Management”, “Division Director”, “Regional Director”, “Head of DEC Spill Response Team”, “Deputy Commissioner”, “Emergency Response Coordinator”, “Regional Spill Engineer”, “Regional Hazardous Waste Remediation Engineer”, “Director of Remedial Bureau”, “Regional Attorney”, “Engineering Geologist”, “Regional Water Engineer”, and “Department Investigator.”
  - c. All correspondence internally at the EPA or externally between the EPA and any third party that contains or references the spill numbers found in Appendix A;
  - d. Any documents associated with any investigations into the spills associated with the spill numbers contained in Appendix A; and
  - e. Any documents relating to the determination of the causes of the spills associated with the spill numbers contained in Appendix A.
5. All communications from Con Edison to the EPA reporting discharges of dielectric fluid from the high-pressure fluid filled (“HPFF”) facilities in the list appended to this request as Appendix B, including, but not limited to, reports referencing National Response Spill Numbers or submitted pursuant to 40 C.F.R. § 112.4 that describe the name or the location of the facility in similar terms as provided in Appendix B.

The above requests include records that contain the information within, or are substantially similar, to the documents described above, even if bearing a different title or name.

If possible, please provide the requested records in electronic format. If the EPA maintains the requested records in a computer database, please contact us before retrieving the records so that we can ensure the retrieved records are in usable and readable format. For any electronic records or electronic communications please include appropriate metadata (*e.g.*, date and time created, author, file name for documents; *e.g.*, to, from, cc, bcc, time, and date for emails) with the production of those records.<sup>1</sup>

We agree to compensate you for the cost of duplicating the records that we request, as provided by law. Upon locating the requested records, please contact us prior to photocopying and advise us of the actual costs of duplication so that we may decide whether a narrowing of the request will be necessary.

As you may be aware, the Freedom of Information Act requires that an agency respond to a request within five business days of receipt of a request. Therefore, we would appreciate a response as soon as possible and look forward to hearing from you shortly. Please furnish any response and the requested records to:

Jonathan H. Hurwitz  
Paul, Weiss, Rifkind, Wharton & Garrison LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
jhurwitz@paulweiss.com

If, for any reason, any portion of this request is denied, please inform us of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed. If you determine that any portion of the requested records are exempt from disclosure pursuant to FOIA, please redact only the material claimed as exempt, inform us of the basis for the exemption claim, and provide copies of those portions of the records that you determine not to be exempt.

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<sup>1</sup> Federal courts have defined “records” under FOIA to include metadata, *Jicarilla Apache Nation v. United States*, 60 Fed. Cl. 413, 414 (2004), and have recognized that where metadata contains information the requesting party is entitled to, the government may not withhold it. *Families for Freedom v. U.S. Customs & Border Prot.*, 837 F. Supp. 2d 287, 304 (S.D.N.Y. 2011) (requiring production of metadata where it might contain the date on which a document was created).

Please do not hesitate to contact me at (212) 373-3254 or jhurwitz@paulweiss.com if you have any questions about this FOIA request. Thank you for your prompt attention to this matter.

Respectfully submitted,

/s/ Jonathan H. Hurwitz

Jonathan H. Hurwitz